FEDERAL COMMUNICATIONS COMMISSION

Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of:

Comment Sought On Streamlining Deployment Of Small Cell Infrastructure	)	WT Docket No. 16-421
By Improving Wireless Facilities Siting Policies;	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	

COMMENTS OF THE CITY OF MINNEAPOLIS, MINNESOTA

I. Introduction

The City of Minneapolis files these comments in response to the Public Notice: "Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC's Petition for Declaratory Ruling, dated December 22, 2016."

Minneapolis urges the Commission not to interfere with the management of property owned by the State of Minnesota, including public property owned by its public subdivisions including the City of Minneapolis. This appears to be an attempt by private industry groups to use the Commission to create private industry rights in property that is owned by the State and its subdivisions.

The City of Minneapolis has been aggressive in creating a procedure for telecommunications providers to locate small cell facilities on City of Minneapolis light poles and potentially other items of public infrastructure. Chapter 451 of the Minneapolis Code of Ordinances lays out, at length, the rules for locating small cell facilities on public infrastructure of the City of Minneapolis. Tens of

thousands of city poles are possible locations pursuant to this ordinance and the pole attachment policies that implement it pursuant to the ordinance. As of this writing, approximately 160 small cell sites have been given approval for installation on City of Minneapolis light poles in the public right of way. The City of Minneapolis continues to act to facilitate small cell deployment in Minneapolis public rights of way, while being careful to make sure that it is consistent with all the other functions of city rights of way and city poles and other assets located in city rights of way.

The City urges the Commission to exercise restraint in restricting the role of local governments in exercising their customary land use powers, environmental powers and historic preservation powers. The City is particularly concerned about suggestions to take property rights in city infrastructure. The City of Minneapolis has developed considerable expertise over many years in applying its policies to protect and further public safety, economic development and other community interests. Among these community interests is facilitating the efficient deployment of state of the art communication systems. Chapter 451 of the Minneapolis Code of Ordinances provides a procedure for attaching communications facilities to city infrastructure that is a part of this effort.

II. Right of Way Management Background

Under Minnesota law, the management of public rights of way by the City is a long standing local responsibility and a matter of public trust that cannot be delegated. *State ex Rel. City of St. Paul v. Great Northern Railway Company*, 134 Minn. 249, 158 N.W. 972 (1916), *State ex Rel. City of St. Paul v. Minnesota Transfer Railway Company*, 80 Minn. 108, 83 N.W. 32, 35 (1900). Management of the public right of ways is a subject area that involves extensive planning and extensive investments in planning. The City works hard to determine the best policies to implement in managing and maintaining public rights of way and in determining the appropriate mix of various modes of transportation. The City of Minneapolis is actively working on developing extensive

transportation networks for various modes of transportation. This includes networks for bicycles, pedestrian precincts, light rail transit zones, possible implementation of street cars and various other transportation components that may involve electrical and wireless components along with various other infrastructures. As the city conducts these studies and then acts upon them, they are required to make policy decisions as to what can go in the public right of way and where. These policy decisions require careful weighing of various interests in determining how various elements of public infrastructure will be managed. This also includes the day-to-day management of tens of thousands of light poles, sign poles, meter poles, message poles, and other structures in the right of way that are part of safely and efficiently using the right of way to promote community planning and safety. The City needs the freedom to make the determinations about the use and locations of these publicly owned assets. The city has already demonstrated its willingness to share use of these assets when the Public Works Director determines that it is appropriate. As a result, small cell deployment is going forward in Minneapolis on Minnesota public property without the need for intervention by the Commission.

III. Minnesota Right of Way Management

The State of Minnesota has an extensive regulatory regime in place under Minnesota Statutes § 237.162 et seq. and Minnesota Rules, Part 7819 that governs use of public rights of way. Communication facilities that are not in the right of way are regulated under the Minneapolis Zoning Code. The Minneapolis Zoning Code no longer requires zoning approval for communication facilities that are located on public infrastructure in the right of way pursuant to Chapter 451 of the Minneapolis Code of Ordinances. Right of way attachment permits, can be granted administratively by the Minneapolis Department of Public Works pursuant to Chapter 451. Communication towers and other communication facilities that are not in the right of way or not on public infrastructure are

regulated under the Minneapolis Zoning Code. Minneapolis has specific criteria for these towers and a specific process for review and appeal of the determinations.

IV. The Commission Should Not Regulate Or Use State and Local Rights of Way

Under Minnesota law, and pursuant to Article 12, § 3 of the Minnesota Constitution, cities are created by the legislature, and the legislature alone determines their organization, administration and functions. Under Minnesota Supreme Court precedent, Minnesota cities are a subdivision of the state for the convenient exercise of such powers as may be entrusted to them. *Monaghan v. Armatage*, 218 Minn. 108, 15 N.W.2d (1944), appeal dismissed, 323 U.S. 681, 65 S.Ct. 436. In governing telecommunications users and using public right of way, the City of Minneapolis in addition to acting as a subdivision of the state is acting pursuant to a comprehensive state regulatory regime for public rights of way. While under *Monaghan v. Armatage*, supra, and following cases; and under the Minnesota State Constitution, the State is said to have the right to control or even seize municipal property, the federal government has no such right. The federal government is a separate sovereign. The federal government would be interfering with the management of sovereign state property. The federal government can create its own rights of way and can manage federal rights of way. The federal government cannot, however, interfere in the management of sovereign state property. As was said in *Printz v. United States*, 521 U.S. 898, 928, 117 S.Ct. 2365, 2381, 138 LEd.2d 914 (1997): "it is an essential attribute of the States retained sovereignty that they remain independent and autonomous within their proper sphere of authority."

Regulating State/City owned public rights of way and making policy decisions about the management of the public infrastructure in and represented by those public rights of way is the proper sphere of authority for state agencies and for the City of Minneapolis acting as a subdivision of the State of Minnesota pursuant to state and local procedures such as Minnesota Statutes §

237.163, Minnesota Rules, Part 7819 and Chapter 451 of the Minneapolis Code of Ordinances. Public property for these purposes includes property owned in fee title, easements for roadway purposes owned by the city, and various other real property interests. The Commission is not in an appropriate position as part of a separate sovereign to make these decisions for State of Minnesota property. Additionally, they are not in a position to make the balancing of various sovereign interests in determining the details of siting various uses on public property or within public infrastructure owned by state entities. In *New York v. United States*, 505 U.S. 144, 163, 112 S.Ct. 2408, 2421, U.S. Supreme Court quoted *Texas v. White*, 7 Wall. 700, 725 (1869) saying: "[N]either government may destroy the other, nor curtail in any such substantial manner the exercise of its powers."

Local government property management under Minnesota law is an exercise of Minnesota's sovereign state governmental power. This is particularly true in the light of extensive state regulation in this area, and in light of the state statutory right to designate any locally managed road as a state trunk highway without compensation. See, for example, Minnesota Statutes § 161.16. As a result, under Minnesota law, local roadways are subject to being transferred to the direct jurisdiction of the State upon the order of the Minnesota Commissioner of Transportation without any legislative action. In *Nixon v. Missouri Municipal League*, 541 U.S. 125, 140, 124 S.Ct. 1555, 1565, 158 LEd.2d 291 (2004), the U.S. Supreme Court was discussing a preemption argument and the relationship of a state to its municipal subdivisions, when the Court said:

> "But the liberating preemption would come only by interposing federal authority between a state and its municipal subdivisions, which our precedents teach, "are created as convenient agencies for exercising such of the government powers of the State and may be entrusted to them in its absolute discretion." *Wisconsin Intervener v. Mortier*, 501 U.S. 597, 607-608, 111 S.Ct. 2476, 115 LEd.2d, 532 (1991). *Columbus v. Our Garage and Wrecker Service, Inc.*, 536 U.S. 424, 433, 122 S.Ct. 2226, 153 LEd.2d 430 (1991) hence the need to invoke our working assumption that federal legislation threatening to trench on the States' arrangements for conducting their own government should be treated with great skepticism, and read in a way that preserves the states

> chosen disposition of its own power, in the absence of a plain statement Gregory requires [*Gregory v. Ashcroft*, 501 U.S. 452, 111 S.Ct. 2395, 115 LEd.2d 410 (1991)]."

As a result, the Supreme Court has made it clear that federal statutes are not to be read in a way that assumes that legislation intends to authorize interference in the relationship between a state and its political subdivisions pursuant to a state constitution or state law. States are allowed to use their municipal subdivisions to govern public rights of way to serve their sovereign interests. The federal government can do the same with their rights of way. The state and federal government are separate sovereigns. *Printz v. United States*, 521 U.S. 898, 925, 117 S.Ct. 2365, 2380, 138 LEd.2d 914 (1997) makes clear that the federal government may not compel the States to implement federal regulatory programs or, in the ordinary case, command the use of state assets. Minneapolis rights of way and the infrastructure within them are assets of the State of Minnesota and of the City as a subdivision thereof. Rules purporting to mandate the use of State/City owned assets by third parties would be a taking of that sovereign property interest. The City requests that the Commission choose an approach to accelerating small cell deployment that does not purport to assert authority to control state governments and their subdivisions in their fundamental responsibility of owning and managing state property, their public rights of way and their personal property located within their right of way.

V. Right of Way Management by Local Governments

Local governments, as they manage public rights of way and public property, typically are not interested in just one objective or set of objectives. The FCC, on the other hand, has a very targeted objective within the communications field. Local governments are simultaneously managing their rights of way for many purposes. These include accommodating sewer, water, electric and gas utilities. This also includes building thousands of items of infrastructure for the operation of roadways, including light poles, sign poles, signal poles, message poles and other items of property.

These include managing and improving storm water, including flood control. Minneapolis city streets are managed not only for automobile and truck traffic, but also to create pedestrian friendly environment, bicycle friendly environment and in an environment friendly to various types of public transit including busses, light rail transit and possibly in the foreseeable future for street cars. As a result, there are many different factors to balance in managing the public right of way and in determining the appropriate use for each public asset in the public right of way. The right of way fits into a larger urban plan and a larger vision. This management and this balancing is the type of activity that can only be done properly by the local community. Safeguards against unfair treatment for any particular element of the urban mix are often appropriate. In Minneapolis we have such safe guards already in place. There are extensive procedures for locating facilities in the public right of way pursuant to both state and local law. These procedures have appeal processes within the municipal environment. Chapter 451 of the Minneapolis Code of Ordinances has specific procedures for the use of city owned infrastructure. A permit for the use of city owned infrastructure can be granted by a designated employee of the Department of Public Works without further action by the city council or other bodies of government. If such official should deny an application, § 451.50(c)(2) of the Minneapolis Code of Ordinances provides for an appeal to the director of the Public Works Department. If the application is still denied, § 451.70 of the Minneapolis Code of Ordinances provides for an appeal to the Minneapolis City Council. Additionally, under Minnesota law, municipal decisions can be reviewed by certiorari in the Minnesota Court of Appeals. See for example, *City of Minneapolis v. Meldahl*, 607 N.W.2d 168 (Minn. Ct. App. 2000), or in specific cases as determined by specific statutes, in the Minnesota District Court. See Minnesota Statutes § 462.361, for example. This is in addition to any remedies that an applicant may have under various other laws.

VI. Possible Commission Actions

The City of Minneapolis strongly urges the Commission to refrain from attempts to require the use by third parties of State/City rights of way. The City strongly urges the Commission to refrain from attempts to regulate State/City rights of way management and facility placement processes as established by the State and City. We do not believe that national policies can fairly account for some of the unique features of various communities. In our community that includes an extensive system of bikeways, various transit options and various best management practices (often pursuant to federal permits) relating to management of rights of way to handle storm water and local flooding. The city also has to act to control local snow and ice conditions as we manage poles that are subject to icing, wind loading and other conditions that are unique to this climate in the center of a large continent. Land use decisions are most often delegated to local governmental units by their states because the decisions are so heavily influenced by the local context. Ubiquitous federal regulations governing the location of antennas and base units on State/City owned property cannot adequately address the unique circumstances encountered by each community. The City believes that such regulations have to start with the city or other local government.

VII. Heritage Preservation

Wireless carriers have little at stake when considering heritage preservation. The FCC on the other hand, is also not in the business of protecting landmarks and does not have expertise in providing that protection. As a result, it is logically and necessarily appropriate to have state and local governments determine what actions are reasonable and permissible in historic districts and in compliance with national, state, and local historic preservation legislation. The Commission should avoid eliminating the ability of local governments to ensure that facility locations meet historic district standards. Improper regulation from the Commission could open the door for the implementation of wireless facilities that are grossly out of character for the historic districts in which they are located.

Section 106 review, pursuant to 54 U.S.C § 306108, should continue to be undertaken for co-locations in historic districts. Local land use decisions in Minnesota are subject to established appeal procedures. The range of urban, suburban, rural, developing, developed and desolate landscapes in our country is far too diverse to be governed by one specific set of regulations. It is therefore essential that localities regulate wireless facilities in the manor that best fits their specific situations.

VIII. Responses to Specific Requests for Comments

Question 1.

(a) What is the process for reviewing and making decisions on siting applications for small wireless facilities (including DAS and small cells).

Response: To affix an attachment to city owned infrastructure, Chapter 451 of the Minneapolis Code of Ordinances allows for a permit application to be submitted and approved by the Minneapolis Public Works Department. The City's pro-active approach encourages and provides education for the small cell applicants about the process to explain the steps, the permits, the parameters and to ensure open communication and feedback from the small cell provider. Because each location, its public infrastructure, and applicant's proposed devices are unique and can vary widely, we encourage applicants to determine their preliminary site locations and needs to allow for early review and questions prior to actually filing requests for permits. This focuses and minimizes applicants' efforts and decreases their risk of designing a construction plan for a site that may be denied. After initial communications about site location(s), the applicants then design fiber routes, design construction plans, perform structural analyses, etc. The applicant's designs and permit requests are then submitted for final approval.

(b) More specifically how much time does it take to complete the process?

Response: Minneapolis recent experience indicates that the first meeting with applicant and

preliminary review by city is about one to three days. Applicant's design varies based on their needs and efforts. City review and approval of a final permit on City infrastructure in the public right of way averages about 19 business days, if properly submitted. An inadequate or incomplete application that needs corrections and resubmittal would increase the amount of time to complete the process.

Question 2. How long does it typically take local governments to process macro cell siting applications?

Response: As to applications that are subject to Title 20 of the Minneapolis Code of Ordinances (the Zoning Code), such as typical macro cell siting applications, approval is within 15 business days of receipt of an application if no revisions are required and no public hearing is required. If revisions are required this timeline can vary significantly based on how quickly applicants are able to respond to requested revisions. If an application requires a public hearing (generally for a new tower or for substantial changes to an existing tower), this timeline is increased to accommodate the timing and noticing requirements of that public hearing, generally 6 to 12 weeks, but largely timing is dependent on whether revisions are required and how quickly the revisions are addressed. Applications to locate facilities on public infrastructure in the public right of way are governed by Title 17, Chapter 451 of the Minneapolis Code of Ordinances and associated policies.

Question 3. The FCC seeks comment on how often local land use authorities approve or deny siting applications. This includes information on how often applications are denied on the basis of, (i) their inadequacy or incompleteness; (ii) engineering defects or other technical problems; (iii) environmental impacts; (iv) aesthetic concerns; (v) perceptions of excessive or overly dense deployment of wireless network facilities in particular areas; or (vi) other reasons.

Response: Minneapolis has recently processed about 160 site locations where communication devices, which we believe are mostly small cells, were approved for location on Minneapolis owned

poles in the right of way. Approximately five permits were denied because a previously approved permit was already granted for that pole location. In these cases, permits were sought for alternative location(s). For applications made under Title 20, the Minneapolis Zoning Code, a large majority are approved, though many require revisions from their initial submission. Applications that are not approved are often withdrawn by the applicant because they are unable to resolve preservation concerns with the State Historic Preservation Office.

Question 4. Are some parties' applications granted more frequently or reviewed more expeditiously than others, and if so, why?

Response: Applications are reviewed in the order they are received by Public Works. All applications to locate on City owned infrastructure in the right of way must meet the same standards that are set out in the City's ordinance and the Pole Attachment Policy enacted pursuant thereto. There is no preference based on the identity of the party submitting the application. If an application is inadequate, usually because it is incomplete, the City promptly notifies the applicant to correct and resubmit their application. If a significantly large volume of applications would be submitted at once by an applicant this may delay review for the next applicant(s) as the reviews occur in the order received. Chapter 451 of the Minneapolis Code of Ordinances specifies that all applications for locating on City infrastructure in the right of way are to be processed on a first come first served basis. As to applications under the Zoning Code, which are applications that aren't asking to locate on public infrastructure in the public right of way, these also are reviewed in the order they are received.

Question 5. The FCC seeks comment on the extent to which litigation ensues as a result of delay or denial of siting applications and on whether litigants invoke §§253 or 332 of the Communications Act, §6409(a) of the Spectrum Act, or other sources of law?

Response: We can recall no litigation over these issues. There has been no litigation over

Chapter 451 issues. We are not aware of any litigation against the City regarding cell siting outside of Chapter 451. We've approved most of the applications and, in the small number of cases where we have discussed a potential denial, an alternative resolution has typically been reached through City processes.

Question 6. What types of fees do local governments currently impose on providers for building facilities in public rights of way, including both upfront fees for processing applications and recurring usage charges?

Response: Minneapolis Code of Ordinances, Chapter 451 and the Pole Attachment Policy adopted by the Minneapolis City Council pursuant thereto, include three types of fees: Encroachment Permit fee (one time), Administrative and Power Installation fee (one time) and a Base Rent (annual payment).

Question 7. Should the FCC attempt to reconcile or otherwise resolve differences in interpretation among the courts? For instance, does an action that prevents a technology upgrade "have the effect of prohibiting" the provision of service within the meaning of federal communications law? Should the FCC address other disputed issues regarding the meaning of the phrase "prohibits" or has the effect of prohibiting" in federal communications law?

Response: No, the FCC should not act on this. Review of these matters is a fact specific, fact intensive inquiry that is appropriate for review by courts based on the specific facts involved. Based on the City's successful approvals of small cell permits, Minneapolis believes its current ordinance and policy are not prohibiting the implementation of small cell devices. The rules are all set out beforehand in published City documents regarding what any provider needs to do to locate their facilities on City property. Regarding technology upgrades, Chapter 451 of the Minneapolis Code of Ordinances anticipated a changing marketplace and changing technologies over time. When an existing permitted

location is proposed for upgrading the City would process a new permit according to the proposed equipment changes.

Question 8. The FCC seeks comments on whether different presumptive timeframes are "reasonable" in the small cell context. They also seek comment on whether timeframes should vary depending on whether a state or local government receives siting requests proposing small cell deployment one at a time or consolidated applications that request authority for a single provider to deploy multiple small cells (i.e., a batch of small cell siting proposals).

Response: In Minneapolis siting requests are reviewed in the order they are received. Applicants should submit their proposals in the order they prefer to receive review. Presumptive timeframes for locating facilities on City owned property are not appropriate. The City of Minneapolis is committed to timely processing all such applications. What is a reasonable period of time for processing applications will, however, vary depending upon the number of such applications, the complexity of the application, and the events that may or may not be occurring in the right of way in the vicinity of the proposed site(s).

Question 9. The FCC seeks comment on whether the FCC's interpretation of a "reasonable period of time" under § 332(c)(7)(B)(ii) should be shorter for state and local governmental review of small cell facility applications. The FCC also seeks comment on how the Commission should define "small cell" for this purpose.

Response: The FCC should not define a period of time because there is no ability to declare every application/request and its location are equal to others. Also, most of the time delay and constraints are under the applicant's control and not caused by the City's review. If small cell definitions are used, then they should be based on functional elements such as power consumption, radio frequencies and interference ranges, device size, etc.

Question 10.

(a) The FCC seeks comment on whether the presumptively reasonable timeframe for small cell requests should be longer when many facilities requests are submitted at once.

Response: Yes, they should be. It should be remembered, however, that all requests to locate on City infrastructure are not the same. Possible proposed roadway and infrastructure projects in the vicinity of a site requested for a location on City infrastructure may cause a delay. The FCC should not establish mandatory timeframes as to locating on a City's property. The City objects to this on both a policy basis and a constitutional basis as previously discussed.

(b) The FCC asks whether they could interpret federal communications laws so as to encourage the practice of processing a "batch" of siting requests by finding longer timeframes to be reasonable if the local government accommodates batched submissions, while holding to the existing, shorter timeframe if it only accepts individual applications.

Response: Applications in Minneapolis are reviewed in the order they are received. Applicants should submit their permit requests in the order they prefer to receive review. Applicants should carefully consider how their own batching could delay their other requests.

(c) For example, should the FCC consider presumptions of 120 days for processing batches of co-location applications and 180 days for processing batches of applications for deployments other than co-locations?

Response: Based on this example, all complete applications in Minneapolis under Chapter 451 have been processed in less than 120 days from final application permit submission. Time for the applicant's education, pre-planning efforts, attachment design, construction plan, structural analyses, and other pre-application work are not and should not be considered as part of this 120 day period. These activities are generally considered to take place before a formal attachment permit application is submitted.

(d) If so, the FCC asks what should be the minimum number of sites to qualify as a "batch" for this purpose. Should there be multiple tiers of time limits depending on how many poles or antennas are involved in a particular request?

Response: Efficiency by both the applicant and the government occur when strong similarities occur. Thus batching, if used, should include sites in close proximity, similar device types, and proposed to be located on similar pole/infrastructure types. A few tiers may be viable but are highly dependent on the location, device, and pole/infrastructure conditions. Once again it has to be emphasized that all applications are not the same. "One size fits all" rules for processing those applications are not appropriate or good policy.

Question 11. The FCC requests information on the extent to which "batching" is currently used by the industry and local governments for the review of small cell deployments, and for an explanation of how well that process has been working to expedite the process and provide local governments with the information they need to make decisions on siting applications.

Response: Each location is unique and requires a separate permit. Minneapolis does get multiple permits submitted at the same time. Current small cell deployment reviews have ranged from 1 to 15 per submission for field verification. Large "batch" submissions would affect review time and the queue among different applicants.

Question 12. The FCC requests information on how long it typically takes local governments to process macro cell siting applications with a comparison of the time it takes to review small cell applications.

Response: Title 20 of the Minneapolis Code of Ordinances (the Zoning Code) does not differentiate between macro and small cell except in referencing small cell installations on public infrastructure in the right of way, which are handled separately under Title 17, Chapter 451. For

installations on private property, macro and small cell applications are reviewed using the same standards and within the same workflow, typically approved with 15 days if no revisions are required and a public hearing is not required.

Question 13. Section 253(c) of the Telecommunications Act of 1996 provides that "nothing in this section effects the authority of a state or local government to manage the public rights of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for use of public rights of way on a non-discriminatory basis if the compensation required is publicly disclosed by such government." The FCC seeks comment on whether the public interest would be served by issuing clarifications of any of this terminology as Mobilitie, LLC has requested in its petition for a declaratory ruling.

Response: The Minneapolis Zoning Code and Minneapolis Code of Ordinances, Chapter 451 and its' City Council adopted Pole Attachment Policy are all public information and readily available. These ordinances and policy are in alignment and consistent with the existing language and terminology of Section 253(c) of the Telecommunications Act of 1996. The City supports the use of the statutory language. The City does not think the public interest will be served by issuing "clarifications" of the statutory language. This section was debated and negotiated in detail over many days. The language chosen represents the public and Congressional consensus reached by the parties and others. It should not be amended, added onto, or "clarified" by the FCC. If "clarification" is really needed, the clarification should come from Congress.

Question 14. According to Mobilitie, LLC, the phenomena of excessive and unfair fees for use of rights of way "is not confined to a few outlier localities-that it exists nationwide. Across the country Mobilitie, LLC is being confronted with multiple fees, often being asked to pay not only upfront fees, but also annual recurring fees which escalate by mandatory amounts year after year." The FCC is

inviting comment on whether these assertions by Mobilitie, LLC are well founded.

Response: These assertions are not well founded in Minneapolis. Minneapolis Code of Ordinances, Chapter 451 and the fees set pursuant thereto are fair and reasonable. The City's 2015 base rent (which includes electricity) is $720/year for each premise (i.e. pole) and includes a reasonable 3% per year increase to account for inflation. The current 2017 base rent is $763.85.

Question 15.

(a) How do local governments determine the upfront fees for applications and permits, or the recurring fees for usage of rights of way?

Response: The upfront one-time lump sum administrative and power installation fee is for field inspection and initial power installation to our city system. The base rent fee includes on-going operational and staff costs which include administration, inspections, electricity costs, pole depreciation/property damage, and additional work due to attachment. The Encroachment Permit fee is a one-time fee for the cost of processing the permit to allow a private use to take place in the public right of way.

(b) The FCC is asking further whether local governments set upfront fees based on the cost they incur in reviewing such applications, or related administrative tasks such as monitoring a provider's construction of facilities, ensuring compliance with local building codes, and excavation regulations in verifying liability insurance?

Response: Yes, these are some of the expected upfront activities in which costs could be incurred. Fees are based on activities needed to meet local government obligations that ensure the public health, safety and welfare of its citizens and visitors.

(c) Is a recurring charge set based on localities' ongoing costs of managing use of rights of way?

Response: Yes, our ongoing base rent fee for locating on City infrastructure is for the ongoing costs of managing the rights of way and the poles or other assets on which facilities are located.

(d) To what extent are localities imposing charges based on other considerations, such as percentage of gross revenues or other indicia of the value of the use of the right of way?

Response: Minneapolis Code of Ordinances, Chapter 451 and the City Council policy adopted pursuant thereto along with the City Council fee resolution do not use a percentage of gross revenues or other market-based value approach. The fees are flat fees per site.

Question 16.

(a) The Commission is requesting comments on whether and how the Commission should interpret § 253(c) for the purpose of ensuring that fees imposed on providers for using rights of way do not exceed fair and reasonable compensation.

Response: The City supports the use of the statutory language only. The City does not think the public interest will be served by issuing "clarifications" of the statutory language. This section was debated and negotiated in detail over many days. The language chosen represents the public and Congressional consensus reached by the parties and others. It should not be amended, added onto, or "clarified" by the FCC. If "clarification" is really needed, the clarification should come from Congress.

(b) The FCC asks whether they should issue a declaratory ruling addressing the issues referred to above, or to address other issues that the courts have not been resolved to date?

Response: The FCC does not need to issue any further rulings related to how local governments are managing their own public rights of way.

(c) In particular, the FCC seeks comments on the proposals raised in Mobilitie, LLC's petition. Mobilitie, LLC requests that the Commission interpret the phrase "fair and reasonable compensation" in § 253(c) to mean that local governments may receive compensation to recover their

cost to review and issue permits, as well as to manage their rights of way, but that any additional charges are unlawful.

Response: Minneapolis Code of Ordinances, Chapter 451 and the fees set pursuant thereto were designed with the purpose of recovering both the initial and ongoing costs that are fair, reasonable and consistently applied. We strongly disagree with Mobilitie LLC's limited view of right of way management. The City is responsible for the upkeep and integrity of infrastructure. This responsibility is taken seriously, as the failure of infrastructure has a direct impact on the health and safety of the public. Infrastructure is typically designed for the purpose of what its function is. All functions outside of this purpose must be carefully and deliberately analyzed as any failure of the infrastructure for a reason that the infrastructure is not designed for, can cause considerable harm to the public and pose a significant liability risk to the City. Electrical logistics are also a challenge. These are not devices that are simply plugged in. Cities have a designed electrical load associated with existing circuitry. These electrical circuits are for the purpose of public benefit through infrastructure like street lighting and traffic signals. As these circuits are tapped for small cell operations, the City is obligated to require a design to assure that electrical infrastructure within these circuits continue to function at the same level, but also that changes meet the National Electric code, and the City's electrical provider current standards. City Staff responses regarding requested small cell locations in consideration of the above mentioned takes time from both the City and the requestor. Installation of third party facilities on City infrastructure is a burden to the City and needs to be fully and fairly compensated.

Question 17. How should the statutory term fair and reasonable compensation be defined?

Response: It is defined well as stated in the statute. Fair and reasonable is reflected in our ordinance and policy. The public taxpayer should not bear the burden of an inverse tax caused by private entities impacts and costs on local governments. "Fair and reasonable compensation" includes

all costs, not just management costs. It includes costs for impacts to the public right of way and to public poles, etc. It includes costs for taking additional risks because of additional facilities on a public pole or in a public right of way. It includes a proportional amount of reasonable depreciation for the public property. It also includes reasonable compensation for the use of another entity's property. Initial determination of this compensation is necessarily with the road management authority as to public infrastructure. Minneapolis disagrees with the use of the term "incremental personnel" because this implies only if we add personnel, do we have a cost. This is not true. "Associated activities and their costs" would be a better phrase to describe the efforts.

Question 18. The FCC seeks comment on Mobilitie, LLC's request that the FCC interpret § 253(c) "competitively neutral and non-discriminatory" provision as requiring that fees imposed on a provider for access to right of way may not exceed the charges that were imposed on other providers for similar access to the rights of way. Is this an appropriate or best definition for the statutory phrase "competitively neutral and non-discriminatory?"

Response: The analysis of this provision changes when the government is charging for the use of its own property as a part of conducting its' own operations. In any event, what fees are appropriate changes over time. Useful comparisons can only be made as to applications that are contemporaneous in time. Nonetheless, Minneapolis fees for use of public infrastructure in the right of way are consistently applied to all users. All users are charged based on the same fee schedule. All users of public infrastructure going forward must follow the same rules, pay the same fees and sign the same documents. This concept is only appropriate as to cities acting in in a regulatory capacity. It does not apply to cities that are managing their own property and building out their own facilities.

Question 19. The FCC seeks comment on the extent to which discriminatory charges imposed by local governments on providers are a wide spread occurrence that needs to be addressed by the FCC.

Response: The City does not impose discriminatory charges. The FCC should not be involved as to any charges being made for the use of City property.

Question 20.

(a) The FCC seeks comment on Mobilitie, LLC's request that the FCC address the provision in § 253(c) that the compensation for the use of rights of way be "publicly disclosed by such government."

Response: Minneapolis Code of Ordinances, Chapter 451 and the policy adopted pursuant thereto were publicly adopted in April 2015 and are available on-line.

(b) Should the FCC adopt Mobilitie, LLC's proposal to "declare that localities must at least disclose to a carrier upon request the charges they have imposed on all carriers for access to rights of way including not only the amount of the charges, but also how they were calculated?

Response: Mobilitie already has such information in Minneapolis because they have received and are using the Minneapolis ordinance and policy.

(c) The FCC seeks information on the extent to which this information is unavailable from local governments and whether lack of information is a wide spread problem.

Response: Minneapolis is not aware of such problems. It is not a problem in Minnesota.

Dated: March 6, 2017

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